

REMARKS

I. Summary of Amendments:

Drawings:

FIG. 3 and Table I are objected to as failing to comply with 37 CFR 1.84(p)(5).

Applicant has proposed a means for correcting these matters, including the later filing of a formal FIG. 3 in which all the marking will be legible, and the renaming of Table I as FIG.4, with the consequent renumbering of the old FIG. 4 as the new FIG. 5.

Specification:

In response to the Examiner's objections to the drawings, the specification has been amended so that the old Table I is now referred to as the new FIG. 4, and the old Fig. 4 is now referred to as the new FIG. 5.

Claims:

In response to the Examiner's rejection of claims 1-13 under 35 U.S.C. 112, Claim 1, 7 and 13 have been amended to delete those adjectives that led to these rejections.

II. Response to Application's Claim Rejections:

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

A. Claims 1 - 13 stand rejected under 35 U.S.C. 112 as being indefinite for the use of the adjective "primary" in Claims 1, 7 and 13.

This rejection is believed to be overcome in view of the above noted amendment of Claims 1, 7 and 13 which deletes the adjective "primary" from these claims.

B. Claims 1 - 13 stand rejected under 35 U.S.C. 112 as failing to comply with its enablement requirement because of the confusion supposedly arising from the use of the adjectives "smaller, natural" in Claims 1, 7 and 13.

This rejection is believed to be overcome in view of the above noted amendment of Claims 1, 7 and 13 which deletes the adjectives "smaller, natural" from these claims.

Additionally, the Applicant notes that the amended claims (e.g., the deletion of "typical" and "taste" from the second element of Claim 1) are no longer indefinite or lacking in any enabling aspects when they cite how to break down a particular mollusk meat break it down so that its pieces are comparable in volume to that of the crustacean-meat whose appearance said pieces are intended to simulate (e.g., for crab: break it to one size if it's to simulate lump crab meat or break it to a smaller size if it's to simulate regular crab meat; for another type of crustacean, the same logic would apply - break it so that it appears comparable in volume to that of the crustacean whose appearance you're trying to simulate).

C. Claims 1 and 13 stand rejected under 35 U.S.C. 102(b) as being anticipated by Juarez (ES2019193). The Examiner noting that "simulating crab meat by providing a supply of mollusks, cooking, mincing."

Applicant submits that the above denoted rejections are unwarranted in view of the following reasoning:

Juarez does not anticipate the present invention because key limitations in the now amended Claims are not disclosed in Juarez. *"Anticipation can only be established by a single prior art reference which discloses each and every element of the claimed invention."* Structural Rubber Prod. Co. v. Park Rubber Co., 749 F.2d 707 (Fed. Cir. 1984). *"Absence of a claim element from a prior art reference negates anticipation."* Atlas Powder co. v. E.I. duPont de Nemours & Co., 750 F.2d 1569 (Fed. Cir. 1984). *"It is axiomatic that for prior art to anticipate under §102 it has to meet every element of the claimed invention."* Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, (Fed. Cir. 1986). *"For a prior art reference to anticipate in terms of 35 U.S.C. §102, every element of the claimed invention must be identically shown in a single reference ..."* In re Bond, 910 F.2d 831 (Fed. Cir. 1990).

Key limitations to the amended Claims 1 and 13 that are not disclosed in Juarez are shown in bolded print below:

1. A method for making a taste- and appearance-simulated, **crustacean-meat** product which comprises the steps of:

providing a supply of the edible meat of a mollusk that is fed upon by said crustacean whose meat is to be simulated,

exerting forces on the surfaces of said edible, mollusk meat so as to form pieces that are comparable in volume to that of the crustacean-meat whose appearance said pieces are intended to simulate, and

cooking said pieces in a manner similar to that used to cook the crustacean-meat whose taste and appearance is to be simulated by said pieces.

13. A method for making a seafood product which simulates the appearance, feel and taste of a specified cooked, hand-picked crustacean meat, said method comprising the steps of

providing a supply of the edible meat of a mollusk that is fed upon by said crustacean whose meat is to be simulated,

exerting forces on the surfaces of said edible, mollusk meat so as to break them along their natural lines of separation so as to form pieces that are comparable in volume to that of the crustacean-meat whose appearance said pieces are intended to simulate, and

cooking said pieces in a manner similar to that used to cook the crustacean-meat whose taste and feel is to be simulated by said pieces.

Thus, Applicant asserts that Juarez does not disclose a method wherein: (1) the method is applicable to simulate any type of crustacean meat – not just crab meat, (2) the mollusks that are used have to be those fed upon by the crustacean whose meat is to be simulated, (3) forces are exerted only of the surfaces of the mollusks, as opposed to chopping or mincing them, (4) the mollusks are broken along their natural lines of separation, (5) the size of the pieces are to be comparable in volume to that of the crustacean-meat whose appearance said pieces are intended to simulate, and (6) the cooking method used is similar to that used to cook the crustacean-meat whose taste and feel is to be simulated by said pieces.

D. Claims 7-10 stand rejected under 35 U.S.C. 102(b) as being anticipated by Juarez (ES2019193). The Examiner noting that “These are product by process claims, it is noted that “even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself.”

Applicant submits that the above denoted rejections are unwarranted in view of the following reasoning:

Juarez does not anticipate the present invention because key limitations in the now amended Claims are not disclosed in Juarez.

Key limitations of Claims 7-10 that are not disclosed in Juarez are shown in **bolded** print below:

7. A seafood product that simulates the appearance, feel and taste of a **specified cooked, hand-picked crustacean meat**, said seafood product comprising:

an edible meat of a mollusk **that is fed upon by said specified crustacean whose meat is to be simulated,**

wherein said edible, mollusk meat having been broken so as to form pieces that are **comparable in volume to that of said specified, crustacean-meat whose appearance said pieces are intended to simulate, and**

wherein said pieces having been cooked **in a manner similar to that used to cook said specified, crustacean-meat whose taste and feel is to be simulated by said pieces.**

8. A seafood product as recited in claim 7 wherein said supply of edible, mollusk meat is **fresh and dry in that said meat has not been soaked in a water solution.**

9. A seafood product as recited in claim 8 wherein said crustacean-meat product is crab meat and the mollusk fed upon by said crab is a scallop whose adductor muscles form its **edible meat.**

10. A seafood product as recited in claim 9 wherein said **surface forces are applied to said scallop adductor muscles so as to break them along their natural lines of separation.**

Thus, Applicant again asserts that Juarez does not disclose a product wherein: (1) the product can simulate any type of crustacean meat – not just crab meat, (2) the mollusks that are used have to be those fed upon by the crustacean whose meat is to be simulated, (3) forces are exerted only of the surfaces of the mollusks, as opposed to chopping or mincing them, (4) the mollusks are broken along their natural lines of separation, (5) the size of the pieces are to be comparable in volume to that of the crustacean-meat whose appearance said pieces are intended

to simulate, and (6) the cooking method used is similar to that used to cook the crustacean-meat whose taste and feel is to be simulated by said pieces.

Additionally, the Applicant notes that the supply of edible, mollusk meat of the claimed product is limited in Claims 8-10 so to be "fresh and dry in that said meat has not been soaked in a water solution" – this is as opposed to the typical surimi type of input which is used in most other simulated shell fish product and in most of the patents cited by the Examiner, where it is common knowledge, and furthermore disclosed in some of the cited patents, that this type of surimi input has been soaked in water to add weight, and contains various antioxidants, flavoring additives and coloring materials.

E. Claims 1, 2, 5-8, 11-13 stand rejected under 35 U.S.C. 103(a) as being obvious over Yuch (US 3863017) in view of Joaquin (US 3532512) and Sugino (US 4362752). The Examiner noting that "Yuch teaches forming simulated lobster ... Joaquin teaches using scallop fiber pieces .. raw and dry meat ... Sugino .. relied on as further evidence of the conventionality of forming a lobster based other mollusk meat (e.g., cuttlefish or squid) ..."

Applicant submits that the above denoted rejections are unwarranted in view of any one of the three following lines of reasoning:

1. The present invention is not obvious over Yuch in view of Joaquin and Sugino because key limitations in the now amended Claims are not disclosed in any of these references, plus, even if they were – there is no suggestion for combining them in the manner of the present invention.

Key limitations of Claims 1, 2, 5-8, 11-13 that are not disclosed in any combination of Yuch, Joaquin and Sugino are shown in **bolded** print below:

1. A method for making a taste- and appearance-simulated, **crustacean-meat** product which comprises the steps of:

providing a supply of the edible meat of a mollusk **that is fed upon by said crustacean** whose meat is to be simulated,

exerting forces on the surfaces of said edible, mollusk meat so as to form pieces that are comparable in volume to that of the crustacean-meat whose appearance said pieces are intended to simulate, and

cooking said pieces in a manner similar to that used to cook the crustacean-meat whose taste and appearance is to be simulated by said pieces.

2. A method as recited in claim 1 wherein said supply of edible, mollusk meat is fresh and dry in that said meat has not been soaked in a water solution.

5. A method as recited in claim 2 wherein said crustacean-meat product is Maine lobster meat and the mollusk fed upon by said lobster is an Atlantic sea scallop whose adductor muscles form its edible meat.

6. A method as recited in claim 5 wherein said surface forces are applied to said scallop adductor muscles so as to break them along their natural lines of separation.

7. A seafood product that simulates the appearance, feel and taste of a specified cooked, hand-picked crustacean meat, said seafood product comprising:

an edible meat of a mollusk that is fed upon by said specified crustacean whose meat is to be simulated,

wherein said edible, mollusk meat having been broken so as to form pieces that are comparable in volume to that of said specified, crustacean-meat whose appearance said pieces are intended to simulate, and

wherein said pieces having been cooked in a manner similar to that used to cook said specified, crustacean-meat whose taste and feel is to be simulated by said pieces.

8. A seafood product as recited in claim 7 wherein said supply of edible, mollusk meat is fresh and dry in that said meat has not been soaked in a water solution.

11. A seafood product as recited in claim 8 wherein said crustacean-meat product is Maine lobster meat and the mollusk fed upon by said lobster is an Atlantic sea scallop whose adductor muscles form its edible meat.

12. A seafood product as recited in claim 11 wherein said surface forces are applied to said scallop adductor muscles so as to break them along their natural lines of separation.

13. A method for making a seafood product which simulates the appearance, feel and taste of a specified cooked, hand-picked crustacean meat, said method comprising the steps of

providing a supply of the edible meat of a mollusk that is fed upon by said crustacean whose meat is to be simulated,

exerting forces on the surfaces of said edible, mollusk meat so as to break them along their natural lines of separation so as to form pieces that are comparable in volume to that of the crustacean-meat whose appearance said pieces are intended to simulate, and cooking said pieces in a manner similar to that used to cook the crustacean-meat whose taste and feel is to be simulated by said pieces.

The Applicant notes that the cited references disclose none of these limitations because: (a) Yuch is based on the use of a surimi input and thus addresses none of the limitations listed above, (b) Joaquin discloses the use of scallops as an input meat, but nowhere specifies that they be "fresh and dry" as opposed to the standard scallops that are water-soaked and frozen; it is totally the conjecture of the Examiner that leads him to look at Joaquin's FIG. 1 and col. 2, lines 17-52 and assert that such scallops are "dry meat" since these words appear nowhere in Joaquin - "raw scallop meat" is disclosed, which, if harvested in the standard manner, is "water-soaked, frozen for some period, but uncooked" meat, and (c) Sugino is based on the use of a surimi-like input and thus addresses none of the limitations listed above.

2. The Applicant argues that "the test of obviousness is not whether "it was obvious to try" a particular combination of elements, for that test ignores the possibility of invention residing in the inventors' recognition of the problem." Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1053, 5 USPQ 2d 1434 (Fed. Cir. 1988).

As has been emphasized in the present application, the problem addressed by the Applicant is that surimi-based products, such as those disclosed in most of the patents cited by the Examiner, have not duplicated with surimi pastes the flakiness or forkability and taste of the basic shellfish, body meats. This presents a significant opportunity for the development of new, imitation or simulated, shellfish products, especially for imitation or simulated, hand-picked, crab meats, which enjoy a large market throughout the world. The patents cited by the Examiner have not recognized or successfully addressed this opportunity.

3. Additionally, the Applicant argues that the Examiner has not provided a reason that suggests the desirability of combining the references in the manner cited.

"If references are said to render the claims obvious, there must be something in the references which suggest the desirability of their combination." Litton System, Inc. v. Honeywell, Inc., 87 F.3d 1559, 1569, 39 USPQ 2d 1321 (Fed. Cir. 1996) ("*[t]*he record

discloses no teaching or suggestion to combine any of these references. The absence of a suggestion to combine is telling in an obviousness determination"): In re Paulsen, 30 F.3d 1475, 1482, 31 USPQ 2d 1617 (Fed. Cir. 1994); Heidelberg Druckmaschinen AG v. Hantscho Commercial Products Inc., 21 F.3d 1068, 1072, 30 USPQ 2d 1377 (Fed. Cir. 1994) ("When the patent invention is made by combining known components to achieve a new system, the prior art must provide a suggestion or motivation to make such a combination"); Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1568, 1 USPQ 2d 1593 (Fed. Cir.) ("elements of separate prior patents cannot be combined when there is no suggestion of such combination anywhere in those patents").

F. Claims 3, 4, 9 and 10 stand rejected under 35 U.S.C. 103(a) as being obvious over Yueh (US 3863017) in view of Joaquin (US 3532512), Sugino (US 4362752) and Ikeuchi (US 4692341). The Examiner noting that "Yueh teaches lobster ... Ikeuchi et al. teach a method of forming lobsters and crab utilizing the same method ... it would have been obvious to also produce crab by the same method ..."

Applicant submits that the above denoted rejections are unwarranted in view of any one of the following three lines of reasoning:

1. The present invention is not obvious over Yueh in view of Joaquin, Sugino and Ikeuchi because key limitations in the now amended Claims are not disclosed in any of these references, plus, even if they were – there is no suggestion for combining them in the manner of the present invention.

(a) As previously noted, key limitations of the independent claims 1 and 7 from which these claims depend are not disclosed in Yueh, Joaquin, and Sugino, and the combination of Ikeuchi with this group does nothing to address these undisclosed limitations in the independent claims.

(b) Key limitations of dependent Claims 3, 4, 9 and 10 that are not disclosed in any combination of Yueh, Joaquin, Sugino and Ikeuchi are shown in **bolded print** below:

3. A method as recited in claim 2 wherein said crustacean-meat product is crab meat and the mollusk fed upon by said crab is a scallop whose adductor muscles form its edible meat.

4. A method as recited in claim 3 wherein said surface forces are applied to said scallop adductor muscles so as to break them along their natural lines of separation.
9. A seafood product as recited in claim 8 wherein said crustacean-meat product is crab meat and the mollusk fed upon by said crab is a scallop whose adductor muscles form its edible meat.
10. A seafood product as recited in claim 9 wherein said surface forces are applied to said scallop adductor muscles so as to break them along their natural lines of separation.

The Applicant notes that Ikeuchi is cited only for its teaching of "lobster and crab," which the Applicant considers to be entirely misleading since Ikeuchi teaches how to mold a look-alike "crab claw" using a fish-paste food product (i.e., surimi) – nowhere in Ikeuchi is there a disclosure that addresses how to make the crab meats (regular and lump) shown in the application's FIG. 4. One of the keys to doing this is the limitation found in the Applicant's independent Claims 1, 7 and 13: "so as to form pieces that are comparable in volume to that of the crustacean-meat whose appearance said pieces are intended to simulate," which is nowhere to be found in the cited patents.

Similarly, the Applicant continues to argue that just as Ikeuchi does not disclose the above limitations, neither do the cited references of Yueh, Joaquin and Sugino.

It can be noted that the Examiner does assert that Joaquin teaches "the scallop pieces are broken along their natural lines of separation." However, a closer review of Joaquin reveals this to not be the case. Joaquin actually purports to teach how to break apart scallops so as to yield "long muscle fibers separated but intact," see left-hand portion of FIG. 1. As shown in the Applicant's FIG. 4 showing simulated crab meats, there are no obvious "long muscle fibers separated but intact" such as that shown in Joaquin's FIG. 1 in the Applicant's simulated crab meats. Thus, whatever Joaquin teaches, it doesn't teach how to make the Applicant's claimed crab meats.

2. The Applicant argues that "the test of obviousness is not whether "it was obvious to try" a particular combination of elements, for that test ignores the possibility of invention residing in the inventors' recognition of the problem." Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1053, 5 USPQ 2d 1434 (Fed. Cir. 1988).

As has been emphasized in the present application, the problem addressed by the Applicant is that surimi-based products, such as those disclosed in most of the patents cited by the Examiner, have not duplicated with surimi pastes the flakiness or forkability and taste of the basic shellfish, body meats. This presents a significant opportunity for the development of new, imitation or simulated, shellfish products, especially for imitation or simulated, hand-picked, crab meats, which enjoy a large market throughout the world. The patents cited by the Examiner have not recognized or successfully addressed this opportunity.

3. Additionally, the Applicant argues that the Examiner has not provided a reason that suggests the desirability of combining the references in the manner cited.

"If references are said to render the claims obvious, there must be something in the references which suggest the desirability of their combination." Litton System, Inc., v. Honeywell, Inc., 87 F.3d 1559, 1569, 39 USPQ 2d 1321 (Fed. Cir. 1996) ("*[T]he record discloses no teaching or suggestion to combine any of these references. The absence of a suggestion to combine is telling in an obviousness determination*"); In re Paulsen, 30 F.3d 1475, 1482, 31 USPQ 2d 1617 (Fed. Cir. 1994); Heidelberger Druckmaschinen AG v. Hantscho Commercial Products Inc., 21 F.3d 1068, 1072, 30 USPQ 2d 1377 (Fed. Cir. 1994) ("*When the patent invention is made by combining known components to achieve a new system, the prior art must provide a suggestion or motivation to make such a combination*"); Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1568, 1 USPQ 2d 1593 (Fed. Cir.) ("*elements of separate prior patents cannot be combined when there is no suggestion of such combination anywhere in those patents*").